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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/657,936

09/09/2003

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04/01/2009

EXAMINER

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ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

04/01/2009

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte SUNNY E.L. HUANG

Appeal 2008-5875
Application 10/657,936
Technology Center 3700

Decided:¹ April 1, 2009

Before DONALD E. ADAMS, DEMETRA J. MILLS, and
JEFFREY N. FREDMAN, *Administrative Patent Judges*.

FREDMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to collapsible containers. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Statement of the Case

The Claims

Claims 1-5 and 11 are on appeal. We will focus on claims 1, 4, 5, and 11, which are representative and read as follows:

1. A collapsible container for storage comprising:

a continuous one piece framework formed of resilient material to allow the one piece framework to be erected into the structural configuration of the shape of the container desired, and when folded, the collapsible container may be flattened into a non-usable position for storage, said one piece framework formed of a resilient material, capable of naturally extending to its erected configuration for usage, and being forcibly flattened into a laminar condition during non-usage, and,

a piece of fabric material applied over select surfaces of said erected one piece framework, to provide confinement to any objects placed within said container during its usage.

4. The collapsible container of claim 3 wherein said piece of fabric is formed of one of cloth, or other covering material.

5. The collapsible container of claim 4 wherein the container, when flattened, is capable of forming into a triangular laminar structure.

11. The collapsible container of claim 4 wherein said piece of fabric material forming the covering includes cowling upon its upper edge, and which cowling closes the upper edge of the side walls for the formed framework.

The prior art

The Examiner relies on the following prior art references to show unpatentability:

Norman	U.S. Patent 4,825,892	May 2, 1989
Ziglar	U.S. Patent 5,964,533	Oct. 12, 1999
Zheng	U.S. Patent 5,975,101	Nov. 2, 1999
Shinner	U.S. Patent 6,325,086 B1	Dec. 4, 2001

The issues

- A. The Examiner rejected claims 1-2 under 35 U.S.C. § 102(b) as being anticipated by Norman (Ans. 4).
- B. The Examiner rejected claims 1-2 under 35 U.S.C. § 102(b) as being anticipated by Ziglar (Ans. 4).
- C. The Examiner rejected claims 3-5 under 35 U.S.C. § 103(a) as being obvious over Norman and Shinner (Ans. 5).
- D. The Examiner rejected claims 3-5 under 35 U.S.C. § 103(a) as being obvious over Ziglar and Shinner (Ans. 5-6).
- E. The Examiner rejected claim 11 under 35 U.S.C. § 103(a) as being obvious over Norman and Zheng (Ans. 6).

A. 35 U.S.C. § 102(b) as being anticipated by Norman

The Examiner finds that Norman teaches

a collapsible container capable of being used for storage (Figures 17, 18) with a continuous one piece framework (50, Figure 1, column 7, lines 35-45) that can be erected to form the sides and base of the container in combination with the fabric walls and base or flattened into a non-use position (Figures 5-8).

(Ans. 4.)

Appellant contends that Norman teaches a device where “the frame has two loops interconnecting at a crossover point, Col. 7 lines 9-12, in a figure eight shape, Fig. 21. Additionally the frame has a member twisted 360°, Col. 7 lines 35-37” (App. Br. 7). Appellant contends that “the present invention has a continuous framework described and shown, Fig. 1, without a crossover and without a twisted frame, specification pg. 5 line 22” (App. Br. 7). Appellant “asserts that the crossover point and twisted frame in Norman do not anticipate the features of the present invention” (App. Br. 7).

In view of these conflicting positions, we frame the anticipation issue before us as follows:

Did the Examiner err in finding that Norman teaches a “collapsible container” satisfying the requirements of claim 1?

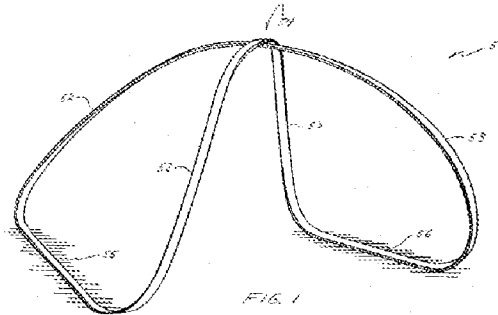
Findings of Fact (FF)

1. Claim 1 requires two structural elements, “a continuous one piece framework formed of resilient material” and “a piece of fabric material applied over select surfaces” where the framework is capable of “extending to its erected configuration” and “being forcibly flattened into a laminar condition” configurations (Claim 1).

2. Norman teaches “a portable structure operable for transforming from a collapsible configuration into an expanded configuration and thence back into the collapsible configuration comprising a frame formed from a flexible coilable material” (Norman, col. 2, ll. 15-19).

3. Norman teaches that the “frame is a continuous piece of the flexible coilable material” (Norman, col. 2, ll. 51-52).

4. Norman teaches a structure of Figure 1 as reproduced below:



“FIG. 1 is a perspective view of the basic frame member . . . with side panels not shown thereby more clearly showing the figure eight character of the frame when in the structure and the frame’s ‘continuous’ character” (Norman, col. 4, l. 66 to col. 5, l. 2).

5. Norman teaches that “the portable structure further comprises front and rear panels formed from a foldable cloth-like material, and the front and rear panels span at least a portion of front and rear spaces” (Norman, col. 3, ll. 36-40).

6. Norman teaches a structure of Figure 11 as reproduced below:

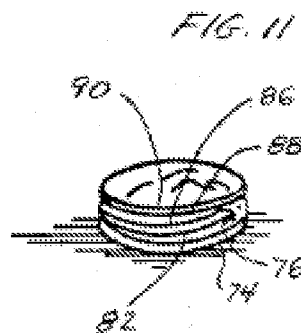


Figure 11 shows that “the fully collapsed structure is like six looped rings with the six small loops lying on top of each other with the panel material wadded in between the six loops” (Norman, col. 8, l. 67 to col. 9, l. 2).

Principles of Law

“A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference.” *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed.Cir.1994); *see Karsten Manufacturing Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed.Cir.2001) (“Invalidity on the ground of ‘anticipation’ requires lack of novelty of the invention as claimed that is, all of the elements and limitations of the claim must be shown in a single prior reference, arranged as in the claim.”).

Claim terms are interpreted using the broadest reasonable interpretation in light of the Specification. *See, e.g., In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000) (“[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification.”). *Also see In re Morris*, 127 F.3d 1048, 1054-56 (Fed. Cir. 1997). (“Absent an express definition in their specification, the fact that appellants can point to definitions or usages that conform to their interpretation does not make the PTO's definition unreasonable when the PTO can point to other sources that support its interpretation.”)

Analysis

Norman teaches a collapsible container comprising a continuous one piece framework of resilient material (FF 2-3). Norman teaches the presence of fabric materials applied over the erected framework (FF 5). Norman teaches that the framework can be erected for use and forcibly flattened into a laminar condition (FF 4-6).

We are not persuaded by Appellant's argument that "the present invention has a continuous framework described and shown, Fig. 1, without a crossover and without a twisted frame, specification pg. 5 line 22" (App. Br. 7). Appellant points to no limitation in claim 1 which imposes a requirement that the continuous framework lack a crossover or twisted frame. Here, we decline to read these negative limitations into the claims. "[L]imitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

Conclusion of Law

The Examiner did not err in finding that Norman teaches a "collapsible container" satisfying the requirements of claim 1.

B. 35 U.S.C. § 102(b) as being anticipated by Ziglar

The Examiner finds that "Ziglar discloses a collapsible container capable of being used for storage (Figure 26F) with a continuous one-piece framework (column 12, lines 47-56 and column 20, lines 14-16) that can be erected to form the sides and base of the container in combination with the fabric walls and base or flattened into a non-use position" (Ans. 4).

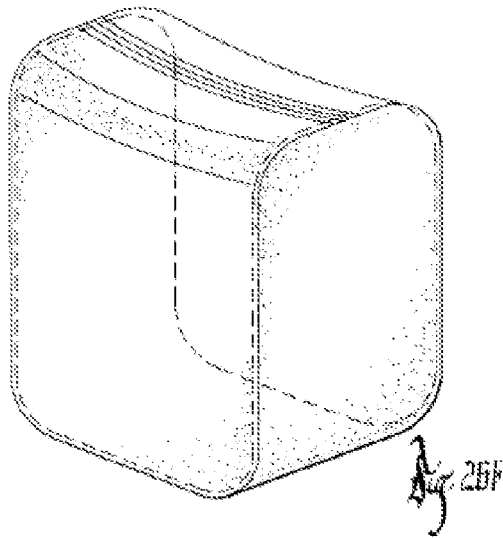
Appellants contend that "the forms of hamper shown in the figures of Ziglar have at least one top piece as shown by reference character 2. Ziglar generally has two triangular top pieces, Col. 11 lines 10-12. On the other hand, the present invention is shown with an open top" (App. Br. 7). Appellant "asserts that the two piece cover in Ziglar does not anticipate the present invention" (App. Br. 7).

In view of these conflicting positions, we frame the anticipation issue before us as follows:

Did the Examiner err in finding that Ziglar teaches a “collapsible container” satisfying the requirements of claim 1?

Findings of Fact

7. Ziglar teaches the hamper of figure 26F reproduced below:



“FIG. 26a-f shows a series of alternative designs” (Ziglar, col. 9, l. 9).

8. Ziglar teaches “[f]or a tension member frame secured to the wall or body, to induce movement of the hamper from a collapsed position, and to oppose movement of the hamper from an expanded position, wire can be used” (Ziglar, col. 12, ll. 47-50).

9. Ziglar teaches that the “wire used should be of a type sufficiently light-weight to allow the hamper to collapse fully through bending of the wire and be self supporting when erect, and yet have sufficient strength to uncoil automatically when twisted and bear the weight of the hamper” (Ziglar, col. 12, ll. 50-55).

10. Ziglar teaches that the “hamper can then be folded into a collapsed or retracted position for packaging and sale” (Ziglar, col. 13, ll. 6-8).

11. Ziglar teaches that the “wall or body of the hamper can be formed of . . . a light weight woven or non-woven, natural or artificial material” (Ziglar, col. 10, ll. 26-29).

Analysis

Ziglar teaches a collapsible container comprising a continuous one piece framework of resilient material as shown by the dashed line in figure 26F (FF 1). Ziglar teaches the presence of fabric materials applied over the erected framework (FF 11). Ziglar teaches that the framework can be erected for use and forcibly flattened into a laminar condition (FF 8-10).

We are not persuaded by Appellant’s argument that “Ziglar generally has two triangular top pieces, Col. 11 lines 10-12. On the other hand, the present invention is shown with an open top” (App. Br. 7). Appellant points to no limitation in claim 1 which distinguishes the container of Ziglar. Here, we decline to read limitations regarding the “open top” into the claims.

“[L]imitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (*citing In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

Conclusion of Law

The Examiner did not err in finding that Ziglar teaches a “collapsible container” satisfying the requirements of claim 1.

C. 35 U.S.C. § 103(a) over Norman and Shinner

The Examiner rejected claims 3-5 under 35 U.S.C. § 103(a) as obvious over Norman and Shinner (Ans. 5). The Examiner finds that it would have been obvious “to have incorporated the use of a resilient composite material as disclosed by Shinner et al in the framework of the container disclosed by Norman since it is known in the art to use resilient composite materials for framework in similar containers” (Ans. 5).

Appellant contends that the “present invention also lacks arches. It is not seen how the two loop construction with arches of Shinner shows the one loop construction of the present invention” (App. Br. 8). Appellant further contends that “[a]s both Norman and Ziglar specify nylon material for rugged use and abuse, usage of less durable cloth in the present invention is not seen as obvious” (App. Br. 8). Appellant “asserts that a compact triangular collapsed framework and folds in parallel planes are not shown by Norman and Ziglar” (App. Br 9).

In view of these conflicting positions, we frame the obviousness issue before us as follows:

Did the Examiner err in finding claims 3-5 obvious over the portable structures of Norman and Shinner?

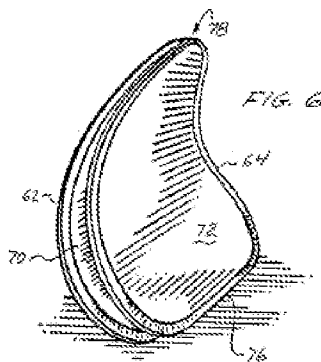
Findings of Fact

12. Shinner teaches that the framework of a tent can be composed of “helically wound glass fibre epoxy composite” (Shinner, col. 13, ll. 7-8).

13. Shinner teaches that “[s]uch a structure has a number of advantages. Using only the composite material for the supports results in a lighter and less expensive structure” (Shinner, col. 9, ll. 65-67).

14. Norman teaches that the “preferred foldable cloth-like materials from which the panels of the portable structure of this invention are formed including the elongated pockets are those commonly used in fabricating tents and other portable structures. Strong, lightweight materials such as . . . Nylon and Dacron are particularly preferred” (Norman, col. 4, ll. 56-63).

15. Norman teaches figure 6 which is reproduced below:



“In FIG. 6, the two large loops are deformed so that they overlie each other and crossover **78** is partly bent towards straight portion **76** of structure **60**” (Norman, col. 8, ll. 50-53).

Principles of Law

The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) secondary considerations of nonobviousness, if any. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). The Supreme Court has recently emphasized that “the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and

creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l v. Teleflex Inc.*, 550 US ____, 127 S. Ct. 1727, 1741 (2007).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 1739. “If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.” *Id.* at 1740.

Moreover, an “[e]xpress suggestion to substitute one equivalent for another need not be present to render such substitution obvious.” *In re Fout*, 675 F.2d 297, 301 (CCPA 1982). As noted by the Court in *KSR*, “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” 127 S.Ct. at 1742.

Analysis

As discussed above, Norman teaches all of the structural limitations of claims 1 and 2 (FF 1-6). Norman further teaches that the fabric is composed of a fabric which is a “cloth-like” material which functions as a covering material” (FF 14). Norman also shows, in figure 6, the collapsed container in a multi-layer or “laminar” structure that is roughly triangular in shape (FF 15). Shinner teaches the use of a resilient composite material framework (FF 12-13).

Claim 3

Applying the *KSR* standard of obviousness to the findings of fact, it would have been obvious to use the composite material for rods shown in the container of Shinner in the structure of Norman since Shinner teaches that “[s]uch a structure has a number of advantages. Using only the composite material for the supports results in a lighter and less expensive

structure” (Shinner, col. 9, ll. 65-67; FF 13). Such a combination is merely a “predictable use of prior art elements according to their established functions.” *KSR*, 127 S. Ct. at 1740.

We do not find persuasive Appellant’s argument that “[i]t is not seen how the two loop construction with arches of Shinner shows the one loop construction of the present invention” (App. Br. 8). Appellant does not identify any requirement for a single loop in claim 1 or dependent claims 2-5. Here, we decline to read limitations regarding “one loop” into the claims. “[L]imitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

Claim 4

We are not persuaded by Appellant’s argument regarding claim 4 that “[a]s both Norman and Ziglar specify nylon material for rugged use and abuse, usage of less durable cloth in the present invention is not seen as obvious” (App. Br. 8). Norman specifically teaches that “preferred foldable cloth-like materials from which the panels . . . are formed including the elongated pockets are those commonly used in fabricating tents and other portable structures” (Norman, col. 4, ll. 56-58; FF 14). As noted by the Court in *KSR*, “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” 127 S.Ct. at 1742. The person of ordinary creativity would reasonably recognize that one common “cloth-like” material that is “commonly used in fabricating tents” is a covering material (FF 14). Additionally, claim 4 permits the use of “other covering material” and is therefore not limited to “cloth”, but would encompass covering

materials such as the nylon material admitted by Appellant to be taught by Norman and Ziglar.

Claim 5

We are not persuaded by Appellant's argument regarding claim 5 "that a compact triangular collapsed framework and folds in parallel planes are not shown by Norman and Ziglar" (App. Br 9). Norman teaches a triangular collapsed structure that is "laminar" (FF 15). Appellant does not identify any basis for the requirement for "folds in parallel planes" in claim 5. Here, we decline to read limitations regarding "folds in parallel planes" into the claims. "[L]imitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

Conclusion of Law

The Examiner did not err in finding claims 3-5 obvious over the portable structures of Norman and Shinner.

D. 35 U.S.C. § 103(a) over Ziglar and Shinner

The Examiner found that

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a resilient composite material as disclosed by Shinner et al in the framework of the container disclosed by Ziglar since it is known in the art to use resilient composite materials for framework in collapsible containers.

(Ans. 6.)

Appellant contends that the "present invention also lacks arches. It is not seen how the two loop construction with arches of Shinner shows the one loop construction of the present invention" (App. Br. 8). Appellant

further contends that “[a]s both Norman and Ziglar specify nylon material for rugged use and abuse, usage of less durable cloth in the present invention is not seen as obvious” (App. Br. 8). Appellant “asserts that a compact triangular collapsed framework and folds in parallel planes are not shown by Norman and Ziglar” (App. Br 9).

In view of these conflicting positions, we frame the obviousness issue before us as follows:

Did the Examiner err in finding claims 3-5 obvious over the portable structures of Ziglar and Shinner?

Findings of Fact

16. Ziglar teaches that “a light weight woven or non-woven, natural or artificial material may be used for the wall material . . . A preferred embodiment uses . . . nylon” (Ziglar, col. 10, ll. 28-34).

17. The Examiner finds that “Ziglar discloses the container is collapsible and capable of being collapsed and coiled (column 16, lines 3-15). Such a framework would also be capable of forming into a triangular laminar structure” (Ans. 6).

Analysis

As discussed above, Ziglar teaches all of the structural limitations of claims 1 and 2 (FF 7-11). Ziglar further teaches that the fabric can include a natural material which functions as a covering material (FF 16). Shinner teaches the use of a resilient composite material framework (FF 12-13).

Claim 3

Applying the *KSR* standard of obviousness to the findings of fact, it would have been obvious to use the composite material for rods shown in

the container of Shinner in the structure of Ziglar since Shinner teaches that “[s]uch a structure has a number of advantages. Using only the composite material for the supports results in a lighter and less expensive structure” (Shinner, col. 9, ll. 65-67; FF 13). Such a combination is merely a “predictable use of prior art elements according to their established functions.” *KSR*, 127 S. Ct. at 1740.

We do not find persuasive Appellant’s argument that the “[i]t is not seen how the two loop construction with arches of Shinner shows the one loop construction of the present invention” (App. Br. 8). Appellant does not identify any requirement for a single loop in claim 1 or dependent claims 2-5. Here, we decline to read limitations regarding “one loop” into the claims. “[L]imitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

Claim 4

We are not persuaded by Appellant’s argument regarding claim 4 that “[a]s both Norman and Ziglar specify nylon material for rugged use and abuse, usage of less durable cloth in the present invention is not seen as obvious” (App. Br. 8). Ziglar specifically teaches that “a light weight woven or non-woven, natural or artificial material may be used for the wall material . . . A preferred embodiment uses . . . nylon” (Ziglar, col. 10, ll. 28-34; FF 16). As noted by the Court in *KSR*, “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” 127 S.Ct. at 1742. The person of ordinary creativity would reasonably recognize that one common “light weight woven material” that is “commonly used in fabricating tents”

is cloth itself (FF 16). Additionally, claim 4 permits the use of “other covering material” and is therefore not limited to “cloth”, but would encompass covering materials such as the nylon material admitted by Appellant to be taught by Ziglar.

Claim 5

We are not persuaded by Appellant’s argument regarding claim 5 “that a compact triangular collapsed framework and folds in parallel planes are not shown by Norman and Ziglar” (App. Br 9). The Examiner reasonably found that the triangular collapsed framework would have been obvious over Ziglar and Shinner (FF 17). Appellant did not provide any argument or evidence to rebut this finding. Further, Appellant does not identify any basis for the requirement for “folds in parallel planes” in claim 5. Here, we decline to read limitations regarding “folds in parallel planes” into the claims. “[L]imitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

Conclusion of Law

The Examiner did not err in finding claims 3-5 obvious over the portable structures of Ziglar and Shinner.

E. 35 U.S.C. § 103(a) over Norman and Zheng

The Examiner found that

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a cowling formed from the fabric material to close the upper edge for the framework as disclosed by Zheng in the container disclosed by Norman to eliminate the need for an

extra sleeve component and time and labor to attach it to the container.

(Ans. 6-7.)

Appellant contends that “[a]s Zheng has overlapping loops, where each loop extends upon the entire perimeter of a panel, it is not seen how a framework upon less than the entire perimeter of a panel is obvious” (App. Br. 9).

In view of these conflicting positions, we frame the obviousness issue before us as follows:

Did the Examiner err in finding claim 11 obvious over the portable structures of Norman and Zheng?

Findings of Fact

18. The Examiner finds that “Zheng discloses a collapsible framework with fabric material and further discloses a cowl formed from the fabric material to close the upper edge for the framework (Figure 2, column 5, lines 37-44)” (Ans. 6).

19. The Examiner finds that one reason to use a cowl is “to eliminate the need for an extra sleeve component and time and labor to attach it to the container” (Ans. 7).

Analysis

Applying the *KSR* standard of obviousness to the findings of fact, it would have been obvious to use the cowl shown in Zheng in the structure of Norman “to eliminate the need for an extra sleeve component and time and labor to attach it to the container” (Ans. 7; FF 19). Such a combination

is merely a “predictable use of prior art elements according to their established functions.” *KSR*, 127 S. Ct. at 1740.

We do not find persuasive Appellant’s argument that “[a]s Zheng has overlapping loops, where each loop extends upon the entire perimeter of a panel, it is not seen how a framework upon less than the entire perimeter of a panel is obvious” (App. Br. 9). Appellant does not identify any basis for the requirement for “less than the entire perimeter of a panel” in claim 11. Here, we decline to read limitations regarding “less than the entire perimeter” into the claims. “[L]imitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

Conclusion of Law

The Examiner did not err in finding claim 11 obvious over the portable structures of Norman and Zheng.

SUMMARY

In summary, we affirm the rejection of claims 1 and 2 under 35 U.S.C. § 102(b) as being anticipated by Norman. We affirm the rejection of claims 1 and 2 under 35 U.S.C. § 102(b) as being anticipated by Ziglar.

We affirm the rejection of claims 3-5 under 35 U.S.C. § 103(a) as obvious over Norman and Shinner. We affirm the rejection of claims 3-5 under 35 U.S.C. § 103(a) as obvious over Ziglar and Shinner.

We affirm the rejection of claim 11 under 35 U.S.C. § 103(a) as obvious over Norman and Zheng.

Appeal 2008-5875
Application 10/657,936

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

dm

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